

the **Voice** for employees

**Nichols Kaster & Anderson, PLLP**

November 29, 2007

The Honorable Susan Illston  
450 Golden Gate Avenue  
San Francisco, CA 94102

RE: Foster et al. v. Nationwide Mutual Insurance Company  
Court File No.: 07-4928

Dear Judge Illston:

This letter is in response to your Order of November 26, 2007.

You are correct, Plaintiff Foster lives in the Eastern District of California, not the Northern District. Our complaint correctly identifies his residence as Placer County, but our argument that Placer County is in the Northern District is clearly wrong.

As a result of your Order, we also made further inquiries of Plaintiff Foster regarding where he worked for Defendant. Mr. Foster confirms that as a field investigator, his territory included the cities of San Francisco and Oakland, and many of the counties in the Northern District. However, after discussing with him the percentage of time he worked in specific cities, we have determined that he worked significantly more in the Eastern District than the Northern District. Our estimate is that he worked approximately 30% of the time in the Northern District, and approximately 70% of the time in the Eastern District. Obviously, this is significantly less time in the Northern District than we previously understood.

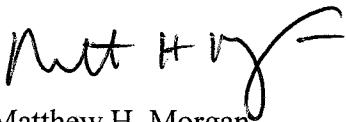
Since the Court's Order, Defendant has contacted Plaintiffs' counsel and offered us the opportunity to avoid the embarrassment (or worse) that may result from our error, by simply conceding the motion and agreeing to transfer the case to the Southern District of Ohio. Although this situation is indeed embarrassing, and counsel apologizes to the Court and is prepared to accept any consequences from this error, we decline Defendant's invitation because the fact remains that this case should be venued in the State of California.

While Mr. Foster resides and primarily worked in the Eastern, not Northern, District, he still lives and works for Defendant in California, as did three other opt-in plaintiffs and 36 total putative class members. California state law claims and a California Rule 23 class are the only state law and Rule 23 class claims pled in the complaint. The California courts have an interest in protecting the rights of the putative California class members, and are most familiar with, and best equipped to interpret, California law.

California also has the largest number of special investigators, and therefore the largest number of witnesses among the states. Ohio, on the other hand, has no current connection to the case other then Defendant's corporate headquarters and a handful of Defendant's corporate representative witnesses.

In light of the additional information obtained from Plaintiff Foster, our error regarding his residence, and the arguments set forth in Plaintiffs' responsive memorandum of law, Plaintiffs believe this case should remain in California, but no longer believe that the Northern District of California is the most appropriate venue. As such, Plaintiffs request this Court deny Defendant's motion to transfer venue to the Southern District of Ohio and transfer this case to the Eastern District of California.

Very Truly Yours,



Matthew H. Morgan

Cc: Paul Lukas  
Don Nichols  
Counsel for Defendant

**CERTIFICATE OF SERVICE**  
Foster, et al. v. Nationwide Mutual Insurance Company  
**Case No. 3:07-cv-04928-SI**

I hereby certify that on November 29, 2007, I caused **Plaintiffs' Supplemental Letter Brief on Defendant's Motion to Transfer Venue** to be served via ECF to the following:

Richard Rahm  
Littler Mendelson P.C.  
650 California Street, 20th Floor  
San Francisco, California 94108

Counsel for Defendant

Dated: November 29, 2007

NICHOLS KASTER & ANDERSON PLLP

s/ Matthew H. Morgan

**NICHOLS KASTER & ANDERSON, PLLP**  
Donald H. Nichols, MN State Bar No. 78918\*  
[Nichols@nka.com](mailto:Nichols@nka.com)  
Paul J. Lukas, MN State Bar No. 22084X\*  
[Lukas@nka.com](mailto:Lukas@nka.com)  
Matthew H. Morgan, MN State Bar No. 304657\*  
[Morgan@nka.com](mailto:Morgan@nka.com)  
4600 IDS Center  
80 S. 8<sup>th</sup> Street  
Minneapolis, MN 55402  
\* admitted *pro hac vice*

**NICHOLS KASTER & ANDERSON, LLP**  
Matthew C. Hallend, CA State Bar No. 250451  
[Helland@nka.com](mailto:Helland@nka.com)  
One Embarcadero Center  
Ste. 720  
San Francisco, CA 94111

ATTORNEYS FOR PLAINTIFFS